

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 ALLIANTGROUP, LP

4:16-cv-03114

5 VS.

July 21, 2017
Houston, Texas
12:01 p.m.

6
7 BRAD MOLS

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11 #80 - MOTION HEARING

12 BEFORE THE HONORABLE NANCY K. JOHNSON

13 UNITED STATES MAGISTRATE JUDGE

14 APPEARANCES:

15 For Plaintiff

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25 Proceedings from official electronic sound recording;
transcript produced by court approved transcriber.

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281.382.9862

1 Appearances (Continuing)
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1 THE COURT: All right. Good morning, everyone.

2 Please be seated.

3 Okay. All right. Thank you-all for coming.

4 All right. We have a number of things to talk
5 about; don't we? I think the first thing I want to talk about
6 are the Motions for Reconsideration, 68 and 69.

7 Well, let me -- actually, let me get
8 announcements of counsel.

9 Who's here for Plaintiff?

10 MR. SIMMONS: Matt Simmons, Kimberly Miers,
11 Matt Marzullo, Adam Perkins are here for the Plaintiff,
12 Alliantgroup.

13 THE COURT: All right. And for Mr. Mols?

14 MR. HUMPHREY: Brian Humphrey by himself.

15 THE COURT: Don't want to join the party,
16 Mr. Humphrey?

17 MR. HUMPHREY: Yeah, that was just a - a nice seat,
18 Your Honor.

19 THE COURT: You are a party.

20 MR. HUMPHREY: That's true, Your Honor.

21 THE COURT: And then, we've got Mr. Lewicki. I see
22 Mr. Hennig.

23 MR. HENNIG: Thank you, Your Honor.

24 THE COURT: And Mr. Schneider, also for Mr. Kaufman,
25 correct?

1 MR. SCHNEIDER: Yes, Your Honor. And this -- in
2 the courtroom, I have my summer law clerk, Al Witchy with me
3 (phonetic), who will be assisting, at the table.

4 THE COURT: Excellent. Good to see you, Mr. Witchy.

5 All right. Let's take up this -- the sanctions
6 on Mr. Norman Kaufman.

7 In light of Mr. Schneider's correctly pointing
8 out to me that I had no authority under Rule 45 to do anything
9 about a subpoena until the char- -- the district in which the
10 compliance is owed refers it back, I am vacating those
11 sanctions. If you want to do something about that,
12 Mr. Simmons, you'll have to file out in California and see if
13 that judge will either hear it or refer it back to me.

14 MR. SIMMONS: And --

15 THE COURT: Either way.

16 MR. SIMMONS: And that's for Norbert Kaufman,
17 Your Honor?

18 THE COURT: Yes.

19 MR. SIMMONS: Okay. And then just as far as the --
20 the motion that I filed in reply to the motion that he -- that
21 Mr. Schneider filed yesterday afternoon, it appears that --

22 THE COURT: That's on Jared Kaufman, I thought. I
23 didn't --

24 MR. SIMMONS: That's --

25 THE COURT: -- think Mr. Schneider --

1 MR. SIMMONS: That's correct.

2 THE COURT: -- was representing Norman Kaufman.

3 MR. SIMMONS: That's correct. And that's what I
4 thought that you said, that you would rely on what Mr.
5 Schneider had said.

6 THE COURT: Well --

7 MR. SIMMONS: Sorry.

8 THE COURT: -- I did.

9 MR. SIMMONS: Okay.

10 THE COURT: I did. But I think that's the problem
11 with my ruling.

12 MR. SIMMONS: Just as far as Norbert Kaufman or all
13 of them?

14 THE COURT: Well, we are going to talk about --
15 Mr. Kaufman has a couple of different issues, Mr. Jared
16 Kaufman.

17 MR. SIMMONS: Okay. Understood.

18 THE COURT: So Mr. Norbert Kauf- -- Norman Kaufman,
19 I'm vacating that sanction. You can seek sanctions out in
20 wherever he is. Is that L.A.?

21 MR. SIMMONS: I believe it's Irvine --

22 THE COURT: Okay.

23 MR. SIMMONS: -- area.

24 THE COURT: And if the judge refers it back, I
25 will rehear that. So those sanctions that I issued June

1 12, vacated.

2 Now, as to Mr. Jared Kaufman, I am concerned
3 when I see a lawyer interpose objections as to form for
4 almost every question, Mr. Hennig. I think you were --
5 this is not how things are done here. Maybe that's super fun
6 in L.A. to do that. It is not the practice here to do that,
7 and I think you would be hard pressed to justify objections as
8 to form on the questions. I've read that deposition. I just
9 think you're way out of line, and I honestly think that it was
10 done to harass. And I'm giving everyone warning now, I am
11 tired of it.

12 So, Mr. Hennig, if things continue like that at
13 future depositions, you know, I'd have to consider taking back
14 the pro hac status, because I just can't allow you to do that.
15 I just won't tolerate it.

16 And the rest of you guys, you're under my thumb
17 anyway, so you're going to have to be nice. All right? I
18 think I've made my point.

19 Now, as to what happens with Mr. Jared Kaufman's
20 deposition, when he took an amazing position of I don't recall
21 to so many things, it is completely incredible. But what I'm
22 concerned about is whether or not you can prove, Mr. Simmons,
23 that this is a -- a game. And I guess what you were saying in
24 his deposition is he -- you had a conversation with him,
25 correct, where he told you a lot of things? That's what it

1 kind of sounded like when I read the deposition.

2 MR. SIMMONS: Actually, he -- he called the general
3 counsel of Alliantgroup. Mr. Simpson is the lead attorney on
4 the case and he just happens to be on vacation this week. It
5 was not moveable. But he called him on two occasions, told
6 him all sorts of things that were asked in there, and, you
7 know, essentially, it would be proving our case if
8 everything he said was correct. And -- and he had all these
9 documents and all this information implicating that they were
10 working -- that Mr. Mols and Ms. Torres were working together
11 at Alliantgroup against Alliantgroup's interests before they
12 left, you know.

13 But, obviously, during his deposition, even to
14 the most broad question, what did we talk about, he didn't
15 recall a single thing that -- that he discussed with Mr.
16 Simpson. Or Mr. Kaufman also called -- so, there's three phone
17 calls that occurred, I believe all in April, just a few --
18 like a month before this deposition, where he tried to get
19 ahold of the CEO of Alliantgroup, ended up speaking with the
20 CEO's assistant, telling her essentially the same story and
21 saying that he wanted to help. And then all of a sudden
22 he shows up at the deposition; he meets Mr. Hennig for
23 the first time that morning, and Mr. Hennig says, hey,
24 I'm -- I'm going to represent you; you don't have to pay me.
25 And he suddenly doesn't recall a single thing about what he

1 talked about, the substance of it. Any documents that
2 he said he had he certainly didn't produce that -- that
3 implicated Mols and Torres working together against
4 Alliantgroup's interests.

5 So, yeah, all of those things put together
6 clearly show that -- that he didn't remember anything.
7 And from Mike he can confer obligation that -- that Mr.
8 Schneider and I went through; his actual explanation
9 apparently is that Ms. Torres had filed -- they had broken up,
10 and they had filed or she had filed a police report against
11 him and spreading rumors about him or something, so he wanted
12 to get back to her -- get -- get back at her, knew she was in
13 this lawsuit, knew Mols was in this lawsuit, and so, he called
14 up Alliantgroup and lied to us. That's now his explanation,
15 certainly not a "I don't recall." But that's now his
16 explanation on why he said, "I don't recall."

17 And I think it's also important to note that
18 under Rule 30, if there were any modifications or
19 clarifications that -- that he needed to make to his
20 deposition, he had 30 days to do that. He got -- he
21 received his deposition on June 12th. It's now July 21st. He
22 hasn't made any attempt to clarify any of those "I don't
23 recalls" or supplement it or anything.

24 So, we're kind of at an impasse on what we can
25 do to -- to get him to properly answer these questions other

1 than his counsel's assurances that if he's re-deposed that he
2 will tell the truth this time.

3 THE COURT: Can you prove that they're in a
4 conspiracy together and you can attribute one conspirator
5 statement against the other?

6 MR. SIMMONS: What do you mean by a "conspiracy
7 together," between Kaufman and Torres? I mean, all of them
8 have the same attorney.

9 THE COURT: But that -- that's not enough. That's
10 not enough.

11 MR. SIMMONS: And I know that he admits to at least
12 helping develop their website. We believe that he even
13 obtained the domain name for the Parakore or the contact
14 group's website even before both Mols and Torres left
15 Alliantgroup on May 2nd.

16 THE COURT: Okay.

17 MR. SIMMONS: So that -- that in and of itself means
18 that he was involved before with -- with this whole scheme.

19 THE COURT: Just interested.

20 Mr. Schneider, what's your client's explanation
21 for his lack of recall, anything?

22 MR. SCHNEIDER: Your Honor, there's a couple of
23 things I'd like to respond to. On the recall issue, I was
24 thinking about it. As I read through the -- I saw the
25 deposition video and read through the transcript, I guess over

1 the weekend. I got it on Friday. And I thought about
2 conversations I've had with people and like what would I do
3 facing - sitting in a deposition asked the same type of
4 questions about, "Did you say to me I have documents that show
5 that they had tricked -- that they stole our information?"

6 And I -- I honestly thought about a
7 conversation that I had with you outside of this courtroom at
8 the Astros game sometime earlier this year. And I thought
9 about what did I talk to Judge Johnson about; could I recall
10 specifically and testify under oath about what exactly I said
11 to her. And then I thought, wait, when was that conversation?
12 I know it was this season. I said it had to be in June. So,
13 I looked at my text messages with the group of friends that I
14 went to the Astros with that day. It was May 3rd. It feels
15 like it was a month ago. Did I show Judge Johnson -- did I
16 talk to Judge Johnson about my dad? I don't -- may- --
17 probably, because we usually do when I see -- when I see Judge
18 Johnson, but I can't - I would not testify under oath. The
19 right answer to, "Did you talk to Judge Johnson about your dad
20 at the Astros game on May 3rd," is, "I don't recall."

21 And the issue with the deposition is that --
22 and -- and with all respect to Alliantgroup's counsel, they
23 left the answer out, "I don't recall." They didn't attempt to
24 expand on -- to ask the question in a different way, to expand
25 on it. If -- if there was an actual effort during that six --

1 there in the six hours that they had the opportunity to -- to
2 expand and test his knowledge and really show this Court that
3 he was being evasive about relevant information related to Mr.
4 Mols' lawsuit, which is a whole separate issue, that he - so
5 moving on from that.

6 In reading Mr. -- Alliantgroup's -- my Motion to
7 Strike last night, one of the things that they indicated that
8 Mr. Kaufman answered evasively is why he -- why he obtained a
9 domain name in Alliantgroup's -- or allegedly obtained --

10 THE COURT: Um-hmm.

11 MR. SCHNEIDER: -- their CEO's website, something
12 that happened after all these lawsuits were filed and
13 something that has nothing to do with the facts at issue in
14 Mr. Mols' dispute, let alone any dispute between Alliantgroup
15 and Mr. Hennig's client.

16 So, the final piece of this is, as part of our
17 meet and confer with my -- my proposed solution would have
18 been or is, is if there are specific questions that they want
19 the -- that they want a thorough answer to, send us a
20 Deposition on Written Questions. I will make sure that Mr.
21 Kaufman answers it fully. If there's a problem with a
22 question or it's ambiguous or vague, I'll call Mr. Simmons and
23 say, "Hey, I don't under- -- this -- this -- what do you --
24 what do you mean by this? Can you give a clarification?

25 And then Jared will provide the answer to the best that he

1 can with my supervision and not coaching but making sure that
2 he's being fully and answering the question, which I think he
3 was honestly trying to do at the deposition, and -- and then
4 give him a second opportunity even to if they have follow-up
5 questions on his answer, they can ask one more set of a
6 depo on written questions. And that way, we don't -- that
7 way, Jared doesn't have to pay for myself to fly to California
8 or another lawyer in California to sit at his deposition, and
9 then only for Mr. Simmons to be unhappy with his answers again
10 and come right back here all over again.

11 THE COURT: So why do we have to give your client so
12 much grace when he didn't choose to even try to be helpful at
13 the deposition?

14 MR. SCHNEIDER: Your Honor, that's the -- that's not
15 why -- so, first, I think -- I don't think -- I don't think he
16 was unhelpful. I think he actually answered the -- the
17 depositions questions for -- on -- on the most part the way a
18 depo deponee -- deposition deponee, with the way they were
19 showing in law school as to how your ideal witness is
20 answering the questions. But on top of that, the real thing
21 is that Alliantgroup didn't object to a single one of his
22 answers during the deposition, as required by the Rules
23 in order to preserve their objections. Their objections
24 were -- they could have corrected this whole -- they could
25 have stopped -- they could have stopped their question and

1 said, "I know that you're not being" -- if -- if they didn't
2 want to go into a different line of questioning, they could
3 have said, "We object. I know your -- you told this to me."
4 Which also, the fact that Mr. Simpson was taking this raises
5 certain ethical issues that he's going to have to testify
6 about what, if -- if it comes to a tru- -- telling the truth
7 that Mr. Simpson becomes a witness. Setting that aside, he
8 could have objected, said, "Nonresponsive, I move to
9 strike your answer. You're not being honest. We're going to
10 get the judge on the phone, and we're going to resolve this
11 right now," before moving for sanctions.

12 THE COURT: And how does the Judge resolve it on the
13 phone if a deponent is determined to lie about something? I'm
14 not saying your client is lying, but, you know, this happens
15 in depositions all the time, Mr. Schneider; deponent's are not
16 truthful or they really can't remember. And to get someone on
17 the line every time saying, "I think you're lying or you're
18 not being completely honest," what am I going to do? Say,
19 "I'm really wearing a black dress right now. You better
20 listen up and answer the question." It doesn't make sense to
21 me.

22 MR. SCHNEIDER: But so what -- what's the difference
23 between you saying it now versus on the phone during the
24 deposition? The big -- the difference is that now Mr. Kaufman
25 has to expend the costs of this --

1 THE COURT: Yes.

2 MR. SCHNEIDER: -- proceeding and we me to go back to
3 court, me -- me to fly to California --

4 THE COURT: Costs can be --

5 MR. SCHNEIDER: -- and sit in a deposition.

6 THE COURT: -- very persuasive.

7 MR. SCHNEIDER: That's -- that is the -- the -- if it
8 happened then and -- and then there was a problem and then
9 there was -- and then we had to end up in front of you because
10 he violated your instruction to stop answering questions
11 evasively, "I think -- I think you're being evasive. Answer
12 everything honestly," could have all -- we wouldn't have to do
13 this and then go back and do that and then end up back here
14 again to do this again.

15 THE COURT: I'm not a big fan of depositions on
16 written questions because I think law- -- you know,
17 lawyers write the answers and they are not helpful.

18 MR. SCHNEIDER: Your Honor, on -- just one
19 more followup on that; nothing Mr. -- I mean, I know this
20 isn't my case and I -- my -- honestly, I haven't read the
21 Complaint. I've read I believe it was yours or -- or Judge
22 Lake's opinion on the 12(b)2s that were filed, so I -- that's
23 my context of the background.

24 THE COURT: It was Lake.

25 MR. SCHNEIDER: The dispositive motions, I've read.

1 But as far as I -- my understanding of the facts, Mr. Kaufman
2 doesn't have anything to offer as -- as far as his testimony.
3 So, it's --

4 THE COURT: He doesn't recall the conversations he
5 had with Mr. Simpson.

6 MR. SCHNEIDER: I mean, he -- he recalls having them.
7 Certain- -- yes, he recalls having them.

8 He doesn't recall the -- like, he wouldn't -- he
9 couldn't say, I -- I absolutely said this, I absolutely said
10 that, but whatever he said was a very -- was all part of a
11 very stupid and immature response to a fight with a -- to
12 multiple fights with an ex-girlfriend and wasn't based on
13 substantive information. It was, hey, I designed their
14 website.

15 You should go -- you should keep digging,
16 because you'll find -- you'll find that golden goose, not,
17 yeah -- he -- my client doesn't know about tax credits. He
18 wouldn't know if they stole confi- -- he didn't work
19 for Alliantgroup. How would he know what Alliantgroup's
20 trade secrets are to say that they were stolen and used?

21 THE COURT: Unless he knew what they were doing.

22 MR. SCHNEIDER: His involvement was designing the
23 website. I mean --

24 THE COURT: That's what he --

25 MR. SCHNEIDER: That's what he was doing.

1 THE COURT: -- says.

2 MR. SCHNEIDER: Yes.

3 THE COURT: But he doesn't really say it very
4 well. My concern is that this deposition is fairly
5 worthless; it doesn't really say -- he doesn't really
6 acknowledge having any conversations, even if he wants
7 to retract and say, "Well, I said it, but I -- I was
8 being vindictive."

9 MR. SCHNEIDER: He -- I -- I -- I believe he does
10 admit to having the conversation with Mr. Simpson. I don't --
11 I think you're right that he says he doesn't remember having
12 the conversation with Cindy -- I think is her name. Is
13 that --

14 MR. SIMMONS: He actually --

15 MR. SCHNEIDER: And -- and if he told me -- I mean,
16 on the phone when I asked him, he told me he doesn't re- -- he
17 doesn't really remember talking to Cindy after that.

18 MR. SIMMONS: He actually -- he -- he says in his
19 deposition that he recalls speaking to John Simpson at least
20 once, but then whenever John Simpson, to -- to your concerns
21 that the questions were too specific right after that, Mr.
22 Simpson said, "What did we talk about?"

23 "I don't recall."

24 So, if the concern is that the questions were
25 too specific, that's about as broad of a question as you

1 can get, and he still said, "I don't recall." And as -- as
2 far as the other points, you know, just because, I guess, also
3 with the follow up -

4 MR. SCHNEIDER: The dot, F.com comment, he got -

5 MR. SIMMONS: He got it because it was --

6 THE COURT: A cool name.

7 MR. SIMMONS: -- a lot cooler name or something.

8 THE COURT: That's a popular name.

9 MR. SIMMONS: Yeah.

10 THE COURT: Really.

11 MR. SIMMONS: I mean, obviously --

12 THE COURT: Come on.

13 MR. SIMMONS: -- that has nothing to do with the
14 collusion that happened beforehand that he said he had
15 documents and information about, but it proves he's lying.

16 MR. SCHNEIDER: Your -- Your Honor, if I can respond
17 on -- on that point. I -- I agree that that was a sort of BS
18 answer on that one point to a nonrelevant question, to
19 something that happened, but was obviously when you're mad at
20 somebody who's chasing you down and -- and -- and trying to
21 mess with you over something that you have no part of. He did
22 something immature to -- oh.

23 (Courier enters the courtroom.)

24 THE COURT: What do you have?

25 MR. SCHNEIDER: A document for me --

1 THE COURT: Okay.

2 MR. SCHNEIDER: -- Your Honor.

3 THE COURT: All right.

4 MR. SCHNEIDER: Thank you.

5 They -- the -- the explanation for getting a --
6 for buying the domain name in a company, that's inane, when
7 you're trying to take your deposition, is you were being
8 immature, and -- but that doesn't warrant what's being asked
9 here. And I would also add that based on the comments in the
10 motion to -- to strike, I believe Alliantgroup said that they
11 aren't moving to compel a deposition; they're moving for
12 sanctions under Rule 37.3(a)(1). And that's why we would not
13 be entitled to fees under 37(a) -- 37 5(b), which would be
14 fees for denying a Motion to Compel.

15 MR. SIMMONS: We're asking for -- to -- to be clear,
16 in the Motions for Sanctions, we're asking for the Court to
17 use your inherent power to control cases under your -- your
18 jurisdiction to sanction Mr. Kaufman, and part of that
19 sanctions, one of the available sanctions, is a re-deposition.
20 To the extent that Rule 37 and Rule 30 apply, which we address
21 in our motion to strike and our response, obviously, those are
22 additional grounds for sanctions against Mr. Kaufman for his
23 evasive, incomplete, and, you know, flat-out lies.

24 So, to -- to respond to that, obviously,
25 there -- there's the Court's inherent power and there's other

1 rules that would justify the Court ordering a re-deposition of
2 a deponent that is lying and is evasive.

3 And to your points about us having to object
4 to the same during the deposition, that's simply not the
5 statute. That's not the law. He doesn't cite any cases
6 that say that.

7 We actually cite cases that do say that that's
8 not the law.

9 THE COURT: So, I think you're entitled to try again
10 with Mr. Kaufman. The question is -- and that will be at --
11 the videographer and the court reporter will be at Mr.
12 Kaufman's expense. I think, however, there are ways to do
13 that where I'm not going to allow you to get your fees to go
14 out there. So, there's ways to do that by phone or by
15 videoconferencing that don't involve your travel out there.

16 MR. SIMMONS: I think that that -- that we --
17 we'd be fine with that, that we can travel out there to
18 the client and eat the expense or we can call in, whatever it
19 may be. But, you know, him having to pay for the court
20 reporter and videographer for the re-deposition, we're
21 certainly amenable to that.

22 THE COURT: Not to exceed two hours.

23 MR. SCHNEIDER: Your Honor?

24 MR. SIMMONS: Okay.

25 THE COURT: Mr. Schneider.

1 MR. SCHNEIDER: I'm sorry.

2 Yes. It would be helpful for us if perhaps we
3 could define what -- at this point what the scope of the
4 issues that are going to be discussed in the deposition or
5 like some sort of scope stating, so there's not a -- an
6 opportunity to go into areas that weren't previously discussed
7 at the prior deposition.

8 MR. SIMMONS: According to -- to Rule 32, the Rule
9 that you cite, if he provides evasive, incomplete answers,
10 those aren't considered answers. So, there's no regurgitation
11 of anything --

12 THE COURT: I --

13 MR. SIMMONS: -- because he didn't answer
14 anything.

15 THE COURT: I'm not sure what you're talking
16 about.

17 MR. SCHNEIDER: I just -- I don't want the
18 deposition to explode into other areas that --

19 THE COURT: Like what?

20 MR. SCHNEIDER: I have no idea. I'm just saying I --
21 I would propose --

22 THE COURT: He's got two hours.

23 MR. SCHNEIDER: Okay. Thank you, Your Honor.

24 THE COURT: Some of the questions here that were
25 objected to as pretty much none of your business, you know, I

1 think some background information on, you know, who you are
2 and where you work, that's kind of typical. So, you know,
3 your -- the objections on relevancy, where the witness gets to
4 determine relevancy I think are inappropriate.

5 So, you know, you've got two hours. If you
6 really want to save some money, I don't know if the Court can
7 assist you in videoconferencing in. I could ask. If you
8 really are interested in that, let me know.

9 MR. SIMMONS: Sure, Your Honor.

10 THE COURT: We've got some videoconferencing ability.

11 MR. SIMMONS: And for -- for the Court to conference
12 in to the deposition?

13 THE COURT: Oh, no --

14 MR. SIMMONS: Conference in?

15 THE COURT: -- I'm not --

16 MR. SIMMONS: Okay.

17 THE COURT: -- volunteering.

18 MR. SIMMONS: Okay.

19 THE COURT: But -- you know, but just we've
20 got things here where we can videoconference.

21 MR. SIMMONS: Understood, Your Honor. And, I
22 guess, just -- just I -- I want to clarify that,

23 Mr. Hennig, you're no longer representing
24 Jared Kaufman, correct?

25 MR. HENNIG: That's correct, Your Honor.

1 THE COURT: Okay.

2 MR. HENNIG: Yes.

3 MR. SIMMONS: Okay.

4 MR. HENNIG: So -- okay. And, Your Honor, if
5 I may?

6 THE COURT: Yes, sir.

7 MR. HENNIG: I do take seriously the Court's
8 admonitions of my -- of my objections, and I understand. And
9 I appreciate you giving me a, if you will, the admonition
10 versus - and letting you know -- further out in the future
11 we'll be - we'll certainly be monitoring, because of the
12 Court's admonition, Your Honor.

13 THE COURT: Good.

14 MR. HENNIG: Thank you.

15 THE COURT: All right. So that takes care of
16 Mr. Kaufman.

17 MR. SIMMONS: And -- and, sorry, Your Honor,
18 as part of that motion against Mr. Hennig, we were also
19 requesting that we be able to videotape Mr. Hennig.

20 We -- we take that -- we'll even pay for that.
21 Just so -- and any of the other third parties that he
22 represents. We will pay for a videographer. We just want to
23 be allowed to have an additional videographer to videographer
24 -- to video graph Mr. Hennig during the deposition as well.
25 So, that's one of the --

1 THE COURT: For what purpose?

2 MR. SIMMONS: I believe that if Mr. Hennig's
3 behavior continues as it was in the Jared Kaufman deposition,
4 that it would be instructive for the Court and everybody
5 involved to understand the true extent of what Mr. Hennig is
6 doing towards his physical movements, which I believe were
7 intimidating towards Mr. Jared Kaufman to get him to say, "I
8 don't recall." And if he does the same thing in Mr. Lewicki's
9 deposition and the client Parakore corporate representative
10 deposition, I think it would be instructive to allow
11 Alliantgroup to hire itself an additional videographer to
12 videotape Mr. Hennig.

13 THE COURT: Mr. Hennig?

14 MR. HENNIG: Yeah, I'll be brief, Your Honor.

15 First of all, Your Honor, the idea that I
16 somehow intimidated Mr. Kaufman -- (sound of objects falling
17 to floor). Excuse me.

18 Your Honor, the id- -- it kind of takes away
19 your thunder when that happens, Your Honor.

20 THE COURT: It does.

21 MR. HENNIG: The idea that I intimidated Mr. Kaufman
22 is just a thin line. I don't know how else to put it. That I
23 intim- -- that I somehow got him to answer these questions, "I
24 don't recall; don't recall it," there's zero evidence of this.

25 Mr. Simmons' portrayal of that is - is fiction,

1 and it's meant to defame my character, and it's wholly
2 inappropriate in this courtroom.

3 Secondly, Your Honor, I would ask -- you know,
4 it's interesting because the only -- you know, I did raise
5 this in the brief. Mr. John Simpson, who took the deposition,
6 lied to me when he said that I was being videotaped. So, in
7 the courtroom, in the transcript he -- says, "You are being
8 recorded." And, in fact, I was not. And I want to know why
9 Mr. Simpson made a material misrepresentation as to my own
10 being video recorded under -- in this courtroom or I should
11 mean in the deposition.

12 THE COURT: Well, "recorded" has a lot of different
13 meanings, so --

14 MR. HENNIG: Well --

15 THE COURT: -- I wouldn't interpret "recording" -- I
16 mean, you've got a videographer, you've got a court reporter,
17 and a lot of times the court reporters have tapes going as
18 well.

19 MR. HENNIG: He clearly -- I - my understanding was
20 he clearly meant that I was being on the video. But be that
21 as it may, Your Honor, this idea that I'm somehow -- that they
22 need to record my conduct, there's no evidence of this, Your
23 Honor, and I take -- I take exception to it.

24 THE COURT: All right. So, this is what we're
25 going to do. Denied as to recording Mr. Hennig. However, you

1 know, people can still give affidavits on what people do, and
2 you've all got video phones. So, you know, I mean, the point
3 is you are a very intense man. You just are. And maybe you
4 don't mean to be intimidating, but maybe you are. I don't
5 know, but I'm not -- I don't -- I don't see that the
6 videotaping Mr. Hennig is appropriate. So, denied on that.

7 MR. HENNIG: Thank you, Your Honor. And -- and I
8 have a lighter side, but sometimes, you're right, and I -- and
9 I do have to remember that --

10 THE COURT: Dial it back.

11 MR. HENNIG: Thank you.

12 THE COURT: All right. So, what are we doing on
13 Plaintiff's Opposed Motion for Protective Orders? I
14 understand that Mr. Hennig will not agree to turn over
15 documents under the extent Protective Order.

16 MR. SIMMONS: Correct. Yes, Your Honor. So
17 Mr. Hennig agreed at - during our June 12th hearing to produce
18 documents, and he agreed to the same Protective Order that Mr.
19 Mols' counsel and I agreed to. He then filed a motion, Doc.
20 63, where he said that the court ordered that the -- there be
21 a provision and that contains an attorneys' eyes only outside
22 counsel only provision within the order. The Court
23 obviously never said that.

24 THE COURT: Yeah. I don't think I did.

25 MR. SIMMONS: But he still put it in the motion, and,

1 actually, the Court did order that in response to that Rule
2 63. So since the court ordered it, I went ahead and added a -
3 - even though we didn't agree on it; we didn't agree on the
4 Court's order, especially since we had this motion for
5 protection requesting the same Protective Order between Mols
6 and ourself to be entered, I went ahead and I said, okay,
7 fine, we'll do an attorneys' eyes only --

8 THE COURT: It gets --

9 MR. SIMMONS: -- outside counsel --

10 THE COURT: -- designated, as I understood it, but if
11 you have a problem with it, you can always ask me to get off
12 of the attorneys' eyes only.

13 MR. SIMMONS: See, and it's not just attorneys' eyes
14 only. He only wants attorneys' eyes only outside counsel
15 only, because he doesn't want Mr. Simpson and Mr. Marzullo
16 here to look at any documents whatsoever. That really hinders
17 us, because how are we supposed to do -- we as outside counsel
18 supposed to be able to tell which clients are properly being
19 solicited versus which clients are not properly being
20 solicited. Mr. Simpson and Mr. Marzullo here are officers
21 of the Court. They're named -- Mr. Simpson's the lead
22 counsel in the case, and, yet, he can't be at any of the
23 depositions where third parties are being deposed and he
24 can't see any documents until they have been
25 de-designated through the Court's jurisdiction to outside

1 counsel only. That's -- that -- that's going to
2 prolong the litigation. And as further evidence of that, Mr.
3 Hennig sent over all the documents that he believes are
4 non-confidential documents. It was ten pages of documents.
5 That's it.

6 And in those documents that Prime and Parakore
7 produced -- by the way, Mr. Lewicki is less, produced a single
8 document, even though the Court ordered him to. Even though
9 they produced ten documents and I believe they produced a few
10 documents before the deposition, their main concern that they
11 raise is that it'll show their trade secrets to us. That's
12 why they want outside counsel and they've excluded. Well, in
13 the documents that they've produced to us, not marked
14 confidential whatsoever, on July 17th -- well, I guess they
15 sent it on July 12th and I believe it was June 8th -- within
16 the documents that they actually produced are communications
17 between Prime and Parakore and their clients/customers' CPAs.

18 So, this is again a tactic that both Mr.
19 Mols and the third parties involved; they're using a shield
20 and sword -- a sword and shield gamesmanship. They're only
21 giving us the communications between them and their client CPA
22 firms that they believe help their argument, but whenever it
23 comes to anything else that we're requesting, they say, no, it
24 it attorneys' eyes only, but it's attorneys' eyes only outside
25 counsel only because you don't get to know who we're dealing

1 with, or Mr. Simpson and Mr. Marzullo don't need to know what
2 -- who we're dealing with. And it makes it an impossible
3 task for us as outside counsel to be able to understand these
4 documents, to be able to get input from the in-house attorneys
5 who have this institutional knowledge of what Alliantgroup
6 clients are, what Alliantgroup CPA firms are, and so it -- it
7 -- it makes it impossible for us. And even in the draft that
8 I sent them, which he just com- -- actually, not even him. He
9 didn't even respond to it. Some other attorney in California
10 responded to my meet and confer letter, which the Court asked
11 us to do, saying that she represents the Hennig Ruiz law firm
12 and every third party, including Mr. Kaufman. And she
13 responded and said, hey, by the way, I haven't talked to
14 Hennig or -- or anybody else, but here are my issues. And
15 then she came back and said, okay, here's my huge red line.

16 One of the things she red lined out of it was
17 the provision that's in all of the agreed Protective Orders
18 that any document of Alliantgroup's that they've produced or
19 that they have, that is not confidential; that is not an
20 attorneys' eyes only outside counsel only. They struck that
21 provision. They wouldn't even agree that our documents that
22 we can -- that John Simpson can see our own documents. So,
23 this is, along with the pattern of practice of delay, delay,
24 delay that we've had to go through with Mr. Mols and that
25 we're having to go through with all the third parties. And

1 that's why during the June 12th hearing, I asked Mr. Hennig
2 point blank if he would agree to the same agreed Protective
3 Order as Mr. Mols had agreed to, because I expected this
4 delay. And he said, yes. And the Court confirmed that. And
5 now he says, nope.

6 THE COURT: All right. So, William, could you -- I
7 didn't think when I was signing 63 that it meant attorneys' --
8 attorney -- outside attorney only.

9 So --

10 MR. SIMMONS: And that's what I was assuming --

11 THE COURT: -- let me --

12 MR. SIMMONS: -- Your Honor.

13 THE COURT: William, print out 63 and 78.

14 (Pause in proceedings.)

15 THE COURT: Let me just see what I -- let me see
16 what I did; 78, I think, the order on 63. I thought I was
17 giving you more time.

18 MR. HENNIG: Yes, Your Honor.

19 MR. SIMMONS: Which, by the way, he didn't need that
20 time, Your Honor, that he asked for.

21 THE COURT: So --

22 MR. HENNIG: Your Honor, you gave us until the 17th,
23 as I recall the order, to produce the non attorneys' eyes only
24 provision, now which we did as the Court said.

25 MR. SIMMONS: You know, the --

1 MR. HENNIG: Per the Court's order.

2 MR. SIMMONS: -- the -- the order that the judge
3 entered was on July 11th. You requested until July 7th. And
4 then, you didn't --

5 THE COURT: But I changed it --

6 MR. SIMMONS: -- produce the document --

7 THE COURT: -- to the 17th.

8 MR. HENNIG: Yes, you did --

9 MR. SIMMONS: Right.

10 MR. HENNIG: -- Your Honor.

11 MR. SIMMONS: Yes, Your Honor. But he didn't
12 know that. My point is that he didn't know that you had
13 changed it to the 17th whenever he only requested until
14 the 7th and he still only produced his documents on the 12th.

15 MR. HENNIG: So -- so --

16 THE COURT: All right. So, let me just say this.
17 When I signed this, I was thinking this was just attorneys'
18 eyes only, and I didn't really appreciate the whole outside
19 counsel issue. So, let's talk about that now, Mr. Hennig.
20 Why cannot lead counsel see these documents?

21 MR. HENNIG: Well, obviously, this was a request
22 we're making of the Court. We don't do so, you know,
23 carelessly. We think that the issue is that -- and from what
24 we've seen of the Houston press, our concern is that --

25 THE COURT: The what?

1 MR. HENNIG: There's been a series of articles about
2 Alliantgroup in the press. We're --

3 MR. SIMMONS: That Mr. Hennig's leaking.

4 THE COURT: Well -- okay. I've --

5 MR. HENNIG: Okay.

6 THE COURT: -- missed --

7 MR. SIMMONS: Admittedly so.

8 THE COURT: -- this.

9 MR. SIMMONS: Anyway.

10 THE COURT: Go ahead.

11 MR. HENNIG: That Mr. Simpson is unfortunately --
12 what's -- what's happened, Your Honor, is that a number of
13 these suits come, okay, and that this is not the first time
14 that Mr. Mols or Ms. Torres is also facing the exact same
15 lawsuit in California, that Alliantgroup uses these suits
16 based upon -- and they're competing against us or filing a non
17 compete group in our area, Your Honor.

18 THE COURT: Um-hmm.

19 MR. HENNIG: And then they track down the folks who
20 are the potential clients and -- and essentially mess with the
21 business. So, Ms. Torres' concern -- and this is just -- Ms.
22 Torres' concern is this, is that what she has understood is
23 that Alliantgroup has used this in the past to go after what
24 they argue is now a competitor, Prime -- Prime Tax Group and
25 Parakore, and essentially does get the business. And that's

1 why Mr. Simpson, we believe, needs to be excluded, because as
2 we understand it, he has been the filer of a lot of these
3 lawsuits that have -- that have happened in the past. But I
4 do want to recognize that this is an unusual request, and --
5 and -- and I'll say that that is our concern as far as the
6 process.

7 THE COURT: All right. I appreciate your concern,
8 but I've -- I've got to amend that order, and attorneys' eyes
9 only is all counsel; Mr. Simpson and the in-house counsel have
10 -- are included in the allowed attorneys' eyes only group.

11 So, I'm amending that.

12 MR. HENNIG: Your Honor, if I may. And I do
13 appreciate the Court's modification. I do want, if possible,
14 obviously, that in the Protective Order that we do have a
15 specific thing about it being walled off in terms of
16 disclosure of this information, even -- you know, because one
17 of the things is that the attorneys can see the information.

18 THE COURT: Um-hmm.

19 MR. HENNIG: And -- and that - that makes sense to --

20 THE COURT: Okay.

21 MR. HENNIG: -- give Mr. Simmons the thing, but if he
22 walled off in some way from other folks at Alliantgroup in
23 terms of sharing this information.

24 THE COURT: Well, that's part of attorneys' eyes only
25 is they can't tell anyone else. I think we're clear on that.

1 MR. SIMMONS: Absolutely, Your Honor.

2 MR. HENNIG: Fair enough. And --

3 THE COURT: So -- I mean, so Mr. Simpson cannot go
4 out and say, we're going after these clients now.

5 MR. SIMMONS: Absolutely, Your Honor.

6 THE COURT: I mean, this is --

7 MR. SIMMONS: And -- and that's in the agreed
8 Protective Order.

9 THE COURT: Okay.

10 MR. SIMMONS: That I sent Mr. Hennig.

11 THE COURT: All right.

12 MR. HENNIG: Thank you --

13 THE COURT: Let --

14 MR. HENNIG: -- Your Honor.

15 THE COURT: Let me know --

16 MR. HENNIG: Appreciate it.

17 THE COURT: If there's problems with that --

18 MR. HENNIG: Okay.

19 THE COURT: But --

20 MR. SIMMONS: And then -- thank -- thank you,
21 Your Honor.

22 Then just -- just for -- because I foresee
23 this to be a continuous issue with Mr. Hennig and -- and
24 myself, or, I guess, whoever is now in charge of drafting the
25 APO, whoever this new law firm is that, apparently,

1 represents all third parties. What attorneys' eyes only
2 is supposed to be, we'll obviously, you know, fight any
3 designations, but the definition of what attorneys' eyes
4 only will be is likely going to be something that Mr. Hennig
5 and I will never agree on just because he thinks everything
6 will be attorneys' eyes only and we will have to be in front
7 of the Court every 15 days for whatever rolling production
8 that they have. So, I guess --

9 THE COURT: You can't --

10 MR. SIMMONS: -- if Mr. Hennig --

11 THE COURT: -- designate everything attorneys' eyes
12 only.

13 MR. HENNIG: Yes, understood --

14 THE COURT: You just can't.

15 MR. HENNIG: Understood, Your Honor. And -- and let
16 me make a suggestion. I will offer to the extent that there --
17 -- there -- there are disagreements to provide these documents
18 to the Court informally in camera and make -- you can make a
19 decision to expedite this process. Because I don't -- I don't
20 think the motion, order is helpful. I think let's just get
21 this worked, and let's get this done, Your Honor.

22 MR. SIMMONS: If that's truly an offer, why
23 didn't you bring the documents here today to have an in camera
24 inspection?

25 THE COURT: A what?

1 MR. SIMMONS: Do an in camera inspection of the
2 documents he believes are attorneys' eyes only outside counsel
3 only?

4 MR. HENNIG: All right. I'm not volunteering Your
5 Honor to do that. I'm saying there's a disagreement, Your
6 Honor.

7 THE COURT: All right.

8 MR. SIMMONS: Okay. And -- and we - we can work that
9 out, I believe, Your Honor. I hope, with your instructions.

10 THE COURT: I hope you can. Because this seems to be
11 the latest fad is everyone wants me to look at their document
12 production. It's like I'm a super fun special master, and
13 it's -- you know, I've had it --

14 MR. SIMMONS: Understood, Your Honor.

15 THE COURT: -- up to here, because I don't have time
16 to looking at everyone's document production.

17 MR. HENNIG: Thank you, Your Honor.

18 THE COURT: All right. So, get this worked out. If
19 you can't, call me, and let's maybe we can work this out on
20 the phone.

21 MR. SIMMONS: Yes, Your Honor.

22 THE COURT: So, then moving to third party Lewicki's
23 Motion to Quash, I ask that why didn't you file this in the
24 District of production, why here, if other clients think I
25 don't have authority to do anything?

1 Mr. Hennig?

2 MR. HENNIG: Mr. Lewicki is in Houston, Your Honor.

3 THE COURT: He's in Houston?

4 MR. SIMMONS: That's correct.

5 MR. HENNIG: Yes, that's --

6 THE COURT: Oh.

7 MR. HENNIG: So you do have jurisdiction --

8 THE COURT: Oh.

9 MR. HENNIG: -- over Mr. Lewinski.

10 THE COURT: Then let's -- let me find that one.
11 That was 27.

12 MR. SIMMONS: Yes, Your Honor, 27. And then also
13 his motion to reconsider that we submitted.

14 THE COURT: So, let's talk about this. When I
15 looked at your subpoena, it looked extremely broad.

16 MR. SIMMONS: We actually did discuss this a
17 little bit during the June 12th hearing, and -- and
18 essentially what we did, we asked seven broad questions and
19 then we asked a bunch of more specific questions about
20 specific clients, about specific interactions between himself,
21 Mr. Mols, Mr. Kaufman and Prime Parakore. So, it's
22 actually -- it can be distilled down to essentially seven
23 questions, even though there's a lot of questions there. It
24 wasn't -- the objections were not timely filed. They -- like
25 the Court noted in -- in the June 12th hearing. And there's a

1 lot of baseless objections that Mr. Hennig even said that may
2 be they weren't artful enough or too artful I think is maybe
3 what he said. And despite the Court's -- what I believed
4 was -- was the intent of the order, and it specifically
5 ordered the Motion to Quash be denied through a review of the
6 transcript, but I thought from the communications between you
7 and Mr. Hennig that it had been quashed, mainly because it was
8 untimely. But even after that, Mr. Lewicki still did not
9 produce a single document, not one.

10 Prime Parakore have even produced documents.
11 Mr. Jared Kauffman's produced documents. All the other
12 third parties that we've requested documents from have
13 produced documents but not Mr. Lewicki. Not a single
14 document.

15 THE COURT: So where are we on this?

16 MR. HENNIG: Well, as I understand it, Your Honor,
17 the documents that Mr. Lewicki would produce are actually in
18 the possession of Prime Tax Group or Parakore because it's an
19 e-mail server is what I understand it to be, Your Honor. So,
20 we were -- we were rolling that into the production for Mr.
21 Lewicki as to Prime Tax Group, Parakore. That's -- that's
22 what I understand. He does not have separate documents is my
23 Understanding, so that if -- if Mr. Simmons wants these
24 documents -- and we understand that -- they have to be -- well,
25 they're from Prime Tax Group --

1 MR. SIMMONS: Mr. --

2 MR. HENNIG: -- production.

3 MR. SIMMONS: Mr. Lewicki's never said that, and I
4 don't know how his communication with --

5 THE COURT: How can he not have --

6 MR. SIMMONS: -- Mr. Jared Kaufman --

7 THE COURT: Yeah, how can he not have possession of
8 these for production purposes?

9 MR. HENNIG: Well, the -- the correct answer
10 to that is I'm not sure. I do not know. That was my
11 understanding of his terms. In terms of the documents they --
12 the substantive documents they want in terms of these clients,
13 those I believe are the Prime Tax Group and Parakore. The
14 reason for that is because Mr. Lewicki worked for Prime Tax
15 Group and Parakore. In other words, he was doing work for
16 them, so they -- he didn't necessarily have possession of
17 those documents. With regard to the documents in terms of
18 communications --

19 THE COURT: Well, no, I don't understand that,
20 because if he is doing work for them, then he ought to have
21 something on his own computer that shows what he's doing. I'm
22 not understanding how this is all working --

23 MR. HENNIG: Well, Your Honor --

24 THE COURT: -- I guess.

25 MR. HENNIG: -- that is my understanding. I haven't

1 had a conversation with Mr. Lewicki about this -- this --
2 about that, so this is what I would offer to the Court. To
3 the extent the Court -- and I understand the production should
4 -- should happen, of course.

5 THE COURT: He needs to produce the documents. I'm
6 not impressed by everything's private, and it's none of
7 your business.

8 MR. HENNIG: Okay. To the --

9 THE COURT: That's overruled.

10 MR. HENNIG: Fair enough. And so what -- let's just
11 set a date for production, then, Your Honor.

12 THE COURT: All right. Two weeks.

13 MR. HENNIG: Thank you.

14 THE COURT: Two weeks. If there's a problem, come on
15 in, and we'll talk about it.

16 MR. SIMMONS: Understood, Your Honor.

17 MR. HENNIG: Understood, Your Honor. Okay.

18 THE COURT: And so six- -- you say I haven't ruled on
19 69?

20 MR. SIMMONS: I believe it's 69. It's Lewicki's
21 motion -- it's either 68 or 69. It's Lewicki's motion to
22 reconsider the sanctions the Court imposed upon him for being
23 a no-show and failing to file a Motion to Quash at his
24 previously scheduled deposition. I believe the costs we're
25 seeking, through an active me, is like \$700. This is a part

1 of the verbal order of that Court ordered right here.

2 THE COURT: All right. Well, that is overruled.

3 MR. SIMMONS: Thank you, Your Honor.

4 THE COURT: Now, on Plaintiff's Motion for
5 Continuance, let's get some dates that are workable.

6 MR. SIMMONS: And just as a note, Mr. Humphreys did
7 agree during the June 12th hearing to the Motion for
8 Continuance. It's actually at --

9 THE COURT: So we did --

10 MR. SIMMONS: I'll find the date.

11 THE COURT: Did we get -- get dates?

12 MR. SIMMONS: We -- we -- he agreed to -- he -- he
13 withdrew his opposition to the motion for a continuance --

14 THE COURT: Okay.

15 MR. SIMMONS: -- at that time. I have subsequently,
16 as part of our -- meet and con- -- meet and confer efforts
17 asked Mr. Humphreys for an additional 30 days since the
18 documents that the Court ordered Mr. Mols to produce weren't
19 produced until like three days ago, more than 30 days -- more
20 than a month after. So I said, hey, listen, you know, Brian,
21 like, your guy hasn't even produced his documents. Obviously
22 the third parties haven't produced their documents. It's been
23 30 days. Can you give me another 30 days beyond what you
24 agreed to during the June 12th hearing. He said, no, that his
25 client's not going to agree to any other extension beyond what

1 he agreed to in the June 12th hearing, which was --

2 THE COURT: All right.

3 MR. SIMMONS: -- what documents he's --

4 THE COURT: So what are you proposing, Mr. Simmons?

5 MR. SIMMONS: I'm proposing a -- an additional
6 30-day continuance on all the deadlines that we requested and
7 Mr. Mols agreed to in document 36 -- 26. At the end of the
8 day, we'll agree to document 26, and -- but with the
9 difficulties that we've gone through so far and Mr. Mols' own
10 lack of production in the last 30 days, complete lack of
11 production, I think that it's reasonable to tack another 30
12 days on the deadlines that are in there, since there hasn't
13 been any documents or -- or other information provided in the
14 last 30 days.

15 THE COURT: All right. So, have you -- let's go back
16 to the Docket Control Order that was entered in January. Have
17 you turned over your expert report?

18 MR. SIMMONS: Yes.

19 THE COURT: You've turned over yours?

20 MR. SCHNEIDER: Yes, Your Honor.

21 THE COURT: Discovery was supposed to cut off June
22 30, but now you want --

23 MR. SIMMONS: And the Court, at least preliminary,
24 did order the discovery deadline since Mr. -- Mr. Humphreys
25 withdrew his opposition. We wanted September 28th as the

1 discovery cut-off, but since there hasn't been any discovery
2 from anybody in the last 30 days, we're now requesting an
3 additional just 30 days on top of that, which would be October
4 31st for the discovery cut-off. The last thing we want to do
5 is have to come back here again and ask for yet another motion
6 for continuance.

7 THE COURT: And you're --

8 MR. HUMPHREY: It may --

9 THE COURT: -- opposed.

10 MR. HUMPHREY: -- still be necessary, but --

11 MR. HENNIG: I am, Your Honor. We don't have
12 any other requests pending or anticipated. We've produced the
13 documents they asked for. My client was laggardly in getting
14 his banking statements. We produced them a week ago. I'm not
15 sure why we need to go through September. And I believe they
16 asked us for it, in the 30-day letter he asked for a January
17 trial date, which I think is way too long for this case. My
18 client really needs to get this case over with. And --

19 THE COURT: So have you filed a Motion for Summary
20 Judgment?

21 MR. HUMPHREY: No. When we spoke last time, I
22 believe we talked about an August deadline which I'm trying to
23 meet, Your Honor.

24 MR. SIMMONS: Well, and also, Your Honor, the --
25 Judge -- under Judge Lake's Scheduling Order, the

1 dispositive motion deadline was, I believe, 30 days after
2 impasse with a mediator. That happened way more than 30 days
3 ago, and --

4 MR. HUMPHREY: The mediator has never declared an
5 impasse.

6 MR. SIMMONS: When was the last time you spoke
7 to Mr. Levin?

8 MR. HUMPHREY: I spoke to him, asked him if has he
9 declared an impasse, and he said no, I have not. So --

10 MR. SIMMONS: He hasn't spoken that to us.

11 And when did you say that?

12 MR. HUMPHREY: When did I --

13 MR. SIMMONS: When did you talk --

14 MR. HUMPHREY: -- say that to him? A couple months
15 ago.

16 Your Honor, the docket order says 30 days after
17 he declares an impasse. That hasn't happened. I don't know
18 what else to say about that other than there's no --

19 THE COURT: Other than we're going to change that.

20 MR. HUMPHREY: Of course.

21 THE COURT: So all right. Discovery ends October
22 31st. All motions must be filed by November 9th. The sooner
23 you file your dispositive motion, the sooner it gets in line,
24 because --

25 MR. HUMPHREY: Yes, Your Honor.

1 THE COURT: -- there's a lot of things on that pile
2 right now. And we'll set trial when I -- I'm done with the
3 dispositive motions. So get it on file. I'm assuming there's
4 some legal ground that you think you can get out on that
5 doesn't require discovery.

6 MR. HUMPHREY: At least on some of the claims, Your
7 Honor.

8 THE COURT: All right. Good. All right. So we've
9 taken care of that.

10 What else do we need to talk about?

11 MR. SCHNEIDER: Your Honor --

12 MR. SIMMONS: Well --

13 MR. SCHNEIDER: Go ahead.

14 MR. SIMMONS: Sorry. Yeah, just along with -- I
15 guess we also have Jared Kaufman, the motion for sanctions
16 regarding his evasion, and the motion against Ms. Dee Nguyen
17 for her false affidavits. And just to let the Court know, Mr.
18 Hennig informed me that Ms. Nguyen is no longer in the case,
19 no longer with the law firm, but she clearly filed several
20 false affidavits in support of the evasion argument that Mr.
21 Kaufman told her and actually threw Mr. Jared Kaufman under
22 the bus in her declaration, saying, I just said what he told
23 me, which was clearly not true. So we're -- we're asking for
24 our fees related to the service of Mr. Kaufman because, just
25 as Mr. Schneider said, he was trying to avoid us and maybe

1 was being a little childish in doing so. That's a paraphrase,
2 but that's essentially what he said.

3 THE COURT: And how is that not precluded by
4 Rule 45?

5 MR. SIMMONS: I believe that through Mr. Jared
6 Kaufman's numerous motions in this case, he has consented to
7 this Court's jurisdiction, and under Rule 45, if -- if a party
8 consents to the Court's jurisdiction, then they can't just
9 say, "Oh, by the way, we want all these things from you, but
10 if you decide against us, you can't touch us." That -- you
11 can't do that. But that goes along with their sword and
12 shield games and gamesmanship that they've been doing. So,
13 it's not a surprise that they're trying to argue that.
14 But it -- it's clear that Mr. -- Mr. Kaufman has been seeking
15 affirmative relief in this court on several occasions and has
16 consented to the jurisdiction and now -- and is just now
17 saying, "Oh, you don't have to consent."

18 THE COURT: How did Mr. Kaufman consent to the
19 jurisdiction?

20 MR. SIMMONS: By showing up. By asking for an
21 extension of his deadline to produce documents. All these
22 other things that -- that he's done. And along with that,
23 we're not just filing that under Rule 45, we're also filing it
24 under the Court's inherent power to control its cases. It's --
25 -- at least in my view, it's absurd to think that he can come

1 in here and ask for -- for leave and then say, "Oh, by the
2 way, you can't touch me if I'm doing this or this."

3 THE COURT: I didn't get the impression that
4 Mr. Kaufman was asking for relief.

5 MR. HENNIG: Your Honor --

6 THE COURT: He was --

7 MR. HENNIG: -- no --

8 THE COURT: He was responding to your request
9 for sanctions, right?

10 MR. HENNIG: Yes, Your Honor.

11 THE COURT: Mr. Hennig.

12 MR. HENNIG: At no point that I'm aware of did Mr.
13 Kaufman ever ask for affirmative relief, and if Mr. Simmons
14 can identify a specific motion, we would be able to respond to
15 that, but this general accusation here, I don't understand --

16 THE COURT: I would tend to agree. I think that this
17 is an issue that -- if you want to seek fees of Mr. Kaufman
18 for the service attempts, then you need to that in the service
19 District. So, to the extent you need a denial, denied. What
20 else?

21 MR. SCHNEIDER: Your Honor, can I get -- can we have a
22 clar- -- just everything I've seen in this case and the
23 disputes back on what happened on June 12th, on the -- on the
24 deposition issue in terms of what Mr. Kaufman's going to pay
25 for, it's the transcript, the -- the court reporter, and the

1 actual someone to be in the courtroom video -- videoing the
2 deposition, not the video link up if they want to do it
3 from --

4 THE COURT: Correct.

5 MR. SCHNEIDER: And it's not a -- it's the usual turn
6 around time, not a --

7 THE COURT: Not expedited.

8 MR. SCHNEIDER: -- daily turn- -- it's one copy.

9 THE COURT: Yeah.

10 MR. SCHNEIDER: Like the standard rules, whatever the
11 court reporter's ordinary practice is at the regular price.

12 THE COURT: Correct.

13 MR. SCHNEIDER: Not expedited or anything.

14 THE COURT: Not any --

15 MR. SCHNEIDER: Yeah, no --

16 THE COURT: -- super-duper stuff. Yeah.

17 MR. SCHNEIDER: -- H D hyphen whatever like it is.

18 MR. SIMMONS: Right. We'll -- yeah. We're not going
19 to ask -- I prefer it to be synced. But we -- we will
20 obviously ask for the transcript costs and the costs of the
21 videog- -- videographer to -- to make the video, I mean.

22 MR. SCHNEIDER: At the --

23 MR. SIMMONS: You're not -- you're not -
24 you're not --

25 MR. SCHNEIDER: The standard whatever like, the

1 standard reporter.

2 THE COURT: Yeah, original --

3 MR. SCHNEIDER: Make one copy.

4 THE COURT: -- plus one.

5 MR. SCHNEIDER: And one, yes.

6 MR. SIMMONS: Absolutely.

7 MR. SCHNEIDER: Yes.

8 THE COURT: All right. We're clear. What else?

9 MR. HUMPHREY: Nothing from me, Your Honor.

10 MR. HENNIG: I think we're done, Your Honor. I
11 appreciate --

12 THE COURT: All right.

13 MR. HENNIG: -- the Court's time. Thank you, Your
14 Honor.

15 THE COURT: Thank you for coming.

16 So why --

17 MR. SIMMONS: We do --

18 THE COURT: Just out of curiosity, why hasn't
19 Mr. Levin declared an impasse if he's not talking to you-all
20 and you're not talking to him?

21 MR. HUMPHREY: Your Honor, he told me, "I'm just not
22 going to do that," because he wants to keep working on the
23 case. That's what he --

24 THE COURT: And what's he doing to work on the case?

25 MR. HUMPHREY: He hasn't done anything, Your Honor.

1 MR. SIMMONS: I -- my understanding - I wasn't
2 involved with the mediation, but my understanding is that
3 there was an impasse at the end of the mediation which
4 occurred in I want to say December.

5 MR. HUMPHREY: Well, there was --

6 MR. SIMMONS: And so there was no need for a formal
7 letter to us, "I declare an impasse."

8 MR. HUMPHREY: That's -- that's not right; there was
9 actually -- there -- there was a settlement proposal on the
10 table at the time that we were analyzing. There was some more
11 settlement discussion afterwards. Mr. Levin worked backwards
12 some time. But, regardless, the Docket Control Order says
13 declaration of an impasse, and that's what I need to rely on.
14 So, I didn't have a deadline at the time. I -- I have a
15 deadline now, and I'm going to meet it, Your Honor.

16 THE COURT: The sooner --

17 MR. HUMPHREY: The deadline says so.

18 THE COURT: -- it's on the pile, the sooner it
19 gets --

20 MR. HUMPHREY: Yes.

21 THE COURT: -- ruled on. But -- so who has the last
22 offer outstanding? Was that your proposal, Mr. Humphrey or
23 was that --

24 MR. HUMPHREY: Oh --

25 THE COURT: -- Plaintiff's?

1 MR. HUMPHREY: -- it's a very complicated proposal,
2 so I'm actually not sure --

3 THE COURT: You're not sure?

4 MR. HUMPHREY: -- Your Honor. It's just talking
5 past. I think -- well, I think that's something we need to
6 discuss.

7 MR. SIMMONS: Yeah, I don't want to get into it --

8 MR. HUMPHREY: Right.

9 MR. SIMMONS: -- the -- the details or anything.
10 All I will say is that it's -- at no point has there been a
11 proposal where Alliantgroup would get any money, if that makes
12 sense.

13 THE COURT: Okay.

14 MR. HUMPHREY: Yes. I agree with that.

15 MR. SIMMONS: That's not for settlement.

16 MR. HUMPHREY: Right.

17 MR. SIMMONS: In their mind.

18 MR. HUMPHREY: Well, I have claims for attorneys'
19 fees in this case, and I frankly didn't pursue them, so --

20 MR. SIMMONS: Then also, Your Honor, we do have a few
21 outstanding motions. We have an outstanding Motion to Compel
22 against Mr. Mols. I believe it's Doc. 34.

23 THE COURT: We talked about that last time, I think.

24 MR. SIMMONS: That's what I thought, Your Honor,
25 but --

1 THE COURT: Do we need to reset that and --

2 MR. HUMPHREY: I don't see why we -- I think we
3 discussed it and we were ordered to produce the -- his
4 financial documents, and that's what we produced last week.

5 MR. SIMMONS: The financial documents were actually
6 in response to the Motion to Quash by Cindy Mols.

7 THE COURT: Right.

8 MR. SIMMONS: And which also there hasn't been
9 technically a written order on that. We proposed one just
10 saying, hey, we -- we quashed it. And that's Doc. 44, I
11 believe.

12 THE COURT: Okay. I'll look at that.

13 MR. HUMPHREY: I -- I've responded to --

14 THE COURT: So what's the problem on 34?

15 MR. HUMPHREY: Which 34 are you --

16 THE COURT: A Motion to Compel. What are we --

17 MR. SIMMONS: This is far --

18 THE COURT: What are you seeking?

19 MR. SIMMONS: It's far more than just financial
20 documents. And which, by the way, the --

21 THE COURT: All right.

22 MR. SIMMONS: -- production -

23 MR. HUMPHREY: Yeah.

24 THE COURT: He's not sure what it is. Talk to him.
25 See what the dispute is. And come in next week, and we'll

1 talk about it.

2 MR. SIMMONS: Okay. That sounds good, Your Honor.

3 THE COURT: I mean --

4 MR. HUMPHREY: Thank you, Your Honor.

5 THE COURT: -- let's move this case.

6 MR. SIMMONS: Thank you.

7 THE COURT: All right. Y'all may be excused.

8 MR. SIMMONS: Thank you, Your Honor.

9 (Proceedings concluded at 11:03 a.m.)

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION
4

5 I, Linda Griffin, court approved transcriber, certify that
6 the foregoing is a correct transcript from the official
7 electronic sound recording of the proceedings in the above-
8 entitled matter.
9

10 /s/ Linda Griffin
11 Linda Griffin
12 Digital Scroll Transcription
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August 1, 2017
Date